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No. 33

IN THE

Supreme Court of the United States

OCTOBER TERM [redacted] 1961

CHARLES DOWD BOX CO., INC.,

Petitioner,

v.

JOHN F. COURTNEY, et al, as they fairly represent the Membership of the United Steelworkers of America, AFL-CIO, and its Local 5158,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE COMMONWEALTH OF MASSACHUSETTS

BRIEF IN OPPOSITION

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IN THE

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OCTOBER TERM, 1960

No. 641

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v.

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ADDITIONAL STATEMENT

The petition herein fails to say what this law suit is about. Its statement of the case therefore needs supplementation.

The petitioner is the Charles Dowd Box Co., Inc. It will be referred to hereinafter simply as the "Company." The respondents are the officers of Local 5158 of the United

Steelworkers of America and a representative of the International Union (hereinafter referred to simply as the "Union"). They brought suit in the Superior Court of Massachusetts as representatives of the membership of the Union and of the local. The suit arose from the following facts.

Following extended collective bargaining negotiations in the spring of 1957, the Union on May 20, 1957, reached agreement with the Company. (R. 45-46). The agreement set the terms and conditions of employment for the production and maintenance employees of the Company at its plant at Worcester, Massachusetts, who are organized in Local 5158. (R. 7-31). The agreement covered the period May 20, 1957-November 21, 1958. (R. 30). Among other changes, it provided for a wage increase of 13 cents per hour, one additional holiday, and changes in the method of computing vacation pay. (R. 6, 46).

The changes in the agreement terms were placed in effect shortly after May 21, 1957 and remained in effect through August, 1957. (R. 46). On September 4, 1957, the Company notified the employees that it would return to the conditions of employment in effect prior to May 21 and, acting in accordance with that decision, reduced wages by 13 cents per hour and deprived the employees of other improvements which the agreement of May 21 had provided. (R. 46).

This suit was then brought asking, *inter alia*, for damages for the claimed breach of contract. (R 1-5). The Company did not seek to remove the case to a Federal District Court but objected to the jurisdiction of the state court and was overruled. (R. 40, 77). On the merits it contended that the agreement of May 21 was invalid on the following grounds: (1) the Company's negotiating committee acted beyond its authority in negotiating it, (2) the Vice President who signed it for the Company had no authority to do so, and (3) it was not signed as required by the Union's officers until August, 1957. (R. 46-47).

The proceedings were concluded as set forth on pp. 4-5 of the petition and a final decree was entered awarding specific sums to named employees as the amount which would have been paid them by the Company if it had fully complied with the contract, plus interest. (R. 93, 103). The Company seeks certiorari on the question of state court jurisdiction.

ARGUMENT

The petition makes a number of assumptions as to the law with which we agree. It assumes, first, that despite *Westinghouse*[1] the present suit could have been brought in a federal court under Section 301 of the Labor-Management Relations Act of 1947, 29 U. S. C. §185. We agree, although this Court has not flatly so held.

The petition assumes, second, that in this suit the applicable substantive law is federal, citing *Textile Workers Union v. Lincoln Mills,* 353 U. S. 448 (1957). We agree.

The petition assumes, finally, that since this suit is cognizable under Section 301 it could have been removed by the Company to a federal district court, citing *Fay v. American Cystroscope Makers,* 98 F. Supp. 278 (S. D. N. Y. 1951). We agree, although the question has never been decided by this Court. *Ingraham* v. *Local 260 IUE,* 171 F. Supp. 103 (D. Conn. 1959) and *Minkoff* v. *Scranton Frocks, Inc.,* 172 F. Supp. 870 (S. D. N. Y. 1959) are to the same effect.

None of these propositions, however, require the conclusion that the Massachusetts court had no jurisdiction. Indeed, such an assertion is contrary to the federal decisions permitting removal: removal jurisdiction is derivative and the removed suit must fail if the court in which it was originally filed was without jurisdiction, even if the federal court would have had jurisdiction if the suit were originally

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[1] *Westinghouse Salaried Employees v. Westinghouse Corp.,* 348 U. S. 437 (1955).

brought there. *Lambert Run Coal Co., v. Baltimore & Ohio R. Co.*, 258 U. S. 377 (1922).

The question here involved has been decided a number of times. Some of the state court cases in which it has been decided are cited by the petitioner. Others are cited in the opinion of the Supreme Judicial Court of Massachusetts. See also *Ryan Aeronautical Co.* v. *UAW Local 509*, 179 F. Supp. 1 (S. D. Calif. 1959). All of these cases hold that the state courts are not ousted by the provisions of Section 301 from consideration of suits for breach of collective bargaining agreements involving industries affecting commerce. Only the uncertain dictum of one federal district judge in a case decided upon other grounds. *(International Plainfield Motor Co. v. Local 343,* 123 F. Supp, 683, 692 (D. N. J. 1954)) and the gratuitous footnote observation of the Third Circuit in the *Westinghouse* opinion (210 F. 2d 623, 629, n. 16) which was rejected by this Court have so far even intimated to the contrary.

There is no conflict of decisions and there is no reason why this Court should, at this time and in this case, reach out to decide the question presented by the petition.

Respectfully submitted,

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